IN THE

Supreme Court of the United States

OCTOBER TERM 1979

No. ~~79~~ _____

~~CLINTON MANGES AND~~ DUVAL COUNTY RANCH COMPANY, INC., and Clinton Manges
Petitioners

v.

SIDNEY SPARKS and R. L. LYND, d/b/a SIDNEY SPARKS, TRUSTEE,
Respondents

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

DAVID V. HERIN
1230 Guaranty Bank Plaza
Corpus Christi, Texas 78475

Attorney for Petitioners, Clinton Manges and Duval County Ranch Company, Inc.

Of Counsel:

BARNHART & LUTHER
1230 Guaranty Bank Plaza
Corpus Christi, Texas 78475
(512) 888-5544

Alpha Law Brief Co., One Main Plaza, No. 1 Main St., Houston, Texas 77002

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioners, Duval County Ranch Company, Inc. and Clinton Manges, pray that a Writ of Certiorari issue to review the Judgment of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The District Court's memorandum order is unreported. It is included in the Appendix contained in the Petition

for Writ of Certiorari submitted by Orville E. Dennis, No. 79-1186, at Page A-1 and the Judgment of the District Court appears in the Appendix at Page A-4, of said Petition.

The first opinion of the Court of Appeals, the per curiam panel opinion, is reported at 588 F.2d 124, and appears in the Appendix at Page A-5 of the Petition for Writ of Certiorari submitted by Orville E. Dennis. The opinion of the Court of Appeals on rehearing en banc is unreported, but is included in the Appendix at Page A-11, of said Petition. The Judgment of the Court of Appeals appears in the Appendix at Page A-41 of said Petition. The order of the Court of Appeals denying the Petition for Rehearing En Banc of Appellee, Orville E. Dennis, appears in the Appendix at Page A-43, of said Petition.

JURISDICTION

The opinion of the Court of Appeals on rehearing en banc was filed on October 22, 1979. The Judgment was entered on October 22, 1979. The order denying the Petition for Rehearing and Suggestion for Rehearing En Banc of Appellee, Orville E. Dennis, was entered on December 14, 1979. The jurisdiction of this Court is invoked pursuant to Title 28, United States Code, Section 1254(1).

QUESTION PRESENTED FOR REVIEW

Whether a private citizen can be liable for damages under Title 42, United States Code, Section 1983, when he is an alleged co-conspirator with a state court judge who is immune from the Section 1983 claim under the doctrine of judicial immunity.

STATUTE INVOLVED

The federal statute involved is Title 42, United States Code, Section 1983 (Act of April 20, 1871, Chapter 22, Section 1, 17 Stat. 13), which reads as follows:

> "Sec. 1983. Civil action for deprivation of rights
>
> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

STATEMENT OF THE CASE

In the District Court below, the Respondents allege that a Texas state district court judge, O. P. Carrillo, conspired with certain private individuals, Duval County Ranch Company, Inc., Clinton Manges, Clarence Martens and Orville E. Dennis, to deprive Respondents of their civil rights. The complaint for damages was brought under 42 United States Code, Section 1983.

In the Respondents' amended complaint, the alleged conspiracy is described as involving the conduct of Duval County Ranch Company, Inc., in suing the Respondents in state district court to wrongfully enjoin the Respondents from certain activity on an oil and gas lease, the judge's entry of a temporary injunction, and Martens and Dennis' signing as individual sureties on the bond required under state law for issuance of the temporary injunction. The temporary injunction was dissolved on appeal to a

Texas appellate court. *Winslow v. Duval County Ranch Company*, 519 S.W.2d 217 (Tex. Civ. App. 1975—Beaumont, writ ref'd n.r.e.).

The District Court below, on motions to dismiss submitted by Petitioners and the other defendants below, dismissed the amended complaint against all defendants. The District Court in its memorandum order premised the dismissal upon the state court judge's immunity from suit under 42 U.S.C., Section 1983.

The District Court found that the state judge's action of entering the injunction was a judicial act within his authority and jurisdiction. The District Court reasoned that, but for the entry of the injunction by the state judge, the Respondents would not have suffered the alleged injury.

Assuming the allegations in the amended complaint to be true for purposes of the hearing on motions to dismiss, the District Court below found that the state judge participated in the alleged conspiracy in his role as judge. His action in the conspiracy, that is, entering the injunction, was a judicial act within his authority and jurisdiction. Thus, the District Court held, the state judge is immune from liability under Section 1983.

As to the complaint against the Petitioners and the other private alleged co-conspirators, the District Court held that a valid claim could not be stated against them under Section 1983. Because of the judge's immunity from suit, the other defendants had not conspired with a state officer against whom a valid claim could be stated under Section 1983.

By per curiam opinion dated January 17, 1979, a three judge panel of the Court of Appeals for the Fifth

Circuit, the Honorable Judges Wisdom, Godbold and Tjoflat, affirmed the trial court's dismissal of the complaint against both the state court judge and the private citizen defendants, including Petitioners. In that opinion, the Court of Appeals affirmed the dismissal of the complaint under the doctrine of judicial immunity as applied to 42 U.S.C., Section 1983 cases.

With respect to the private citizen defendants, including Petitioners, the Court below held that the private citizens, in allegedly conspiring with a state judge, did not conspire with a person against whom a claim valid under 42 U.S.C., Section 1983 could be stated, and thus themselves were entitled to dismissal of claims made against them under that statute.

No petition for rehearing was filed nor was any motion to stay issuance of the mandate filed. Then, on March 9, 1979, notice was given by the clerk of the Court of Appeals of the entry of an order by a then majority of judges in active service, on the Court's own motion, to rehear the cause by the Court en banc with oral argument. Through its clerk, the appeals court below notified Petitioners and the other parties of its intent to reconsider en banc the holding of the panel affirming the dismissal of the complaint as to the private alleged co-conspirators. The clerk's notice referred specifically to a footnote, number 13, in a recent opinion of this Court, *Stump v. Sparkman,* 435 U.S. 349, at 364, 55 L.Ed.2d 331, at 344, 98 S.Ct. 1099 (1978).

The cause was submitted on rehearing to the Court of Appeals en banc on June 5, 1979. By opinion dated October 22, 1979, by a ten to four decision, the Court of Appeals affirmed the panel's holding that the state court

judge was immune from suit, but reversed as to the private alleged co-conspirators.

The majority in the en banc opinion on rehearing reasoned that, even though the state court judge is immune from suit under Section 1983, his participation in the alleged conspiracy, that is, his granting the temporary injunction, still gave the alleged conspiracy the requisite action under color of state law. Since the conspiracy had the requisite state action, a claim could be maintained under Section 1983 against the private citizen alleged co-conspirators.

Dennis filed a petition for rehearing and suggestion for rehearing en banc on November 5, 1979, which was overruled by order of the Court of Appeals entered on December 14, 1979. Upon Dennis' motion for stay of issuance of mandate, the Court of Appeals stayed the mandate until February 1, 1980.

ARGUMENT AND AUTHORITIES

Petitioners adopt herein in its entirety the argument and authorities made by Orville E. Dennis in his Petition for Writ of Certiorari previously filed herein in No. 79-1186. The positions of Petitioners and Dennis on the question presented are identical.

SUMMARY

It is respectfully submitted that the Supreme Court should exercise its power of supervision over the federal circuit courts and resolve the issue in favor of the doctrine of judicial immunity.

CONCLUSION

For the reasons set forth above, Petitioners, Duval County Ranch Company, Inc. and Clinton Manges, prays that this Court enter its order directing that a Writ of Certiorari issue to review the Judgment of the United States Court of Appeals for the Fifth Circuit below, and upon such review that this Court reverse the Judgment below, and upon such review that this Court reverse the Judgment below insofar as it reverses the district court's dismissal of the complaint against Petitioner and the other defendants below, and that this Court affirm the Judgment of the district court below dismissing the complaint against this Petitioner and the other defendants below.

Respectfully submitted,

Duval County Ranch Company, Inc. and Clinton Manges

By: _____

DAVID V. HERIN
BARNHART & LUTHER
1230 Guaranty Bank Plaza
Corpus Christi, Texas 78475
Attorney for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that three copies of the foregoing Petition for Writ of Certiorari have been deposited with the United States Postal Service, with proper first-class postage affixed thereto, certified mail, return receipt requested, addressed to each of the following parties, or where represented by counsel, to the counsel of record in the court below: Mr. Garland Smith, P.O. Drawer 1104, Weslaco, Texas 78596; Mr. Clarence Martens, #5, Northwood, Del Mar Hills, Laredo, Texas; Mr. Finley L. Edmonds, Post Office Box 2624, 1515 Bank & Trust Tower, Corpus Christi, Texas 78403, and Hon. Mark White, Attorney General, Post Office Box 12548, Austin, Texas 78711, Attn: Ms. Laura Martin, Asst. Attorney General; on the _____ day of _____, 1980.

DAVID V. HERIN
BARNHART & LUTHER
1230 Guaranty Bank Plaza
Corpus Christi, Texas 78475